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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983.

No. 83-110

VIVIAN WILLIAMS, ET AL,

Petitioners

v.

SHAWN LADNER, ET AL,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF THE
STATE OF MAINE

MEMORANDUM OPPOSING CERTIORARI

EDWARD H. CLOUTIER, ESQ.
COUNSEL OF RECORD
CLOUTIER, JOYCE, DUMAS & DAVID
3 Church Street, P.O. Box E
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Attorney for Respondent,
Shawn Ladner
(207) 897-3911

Of Counsel:
PATRICK E. JOYCE, ESQ.

MEMORANDUM OF SHAWN LADNER
OPPOSING CERTIORARI

Respondent Shawn Ladner represents to the Court as follows:

1. The decision of the Maine Supreme Judicial Court of which review is sought by Petitioners, which is reported as Ladner v. Mason Mitchell Trucking Co., 434 A.2d 37 (Me. 1981), was decided on August 24, 1981. The Petition was filed on July 21, 1983, more than 90 days since the entry of judgment by the Maine Supreme Judicial Court, and the period for applying for a writ of certiorari was not extended by a Justice of the Court pursuant to 28 U.S.C. §2101(c) or Rule 22 of this Court. Therefore, time has lapsed for the Petitioner's application for a writ of certiorari.

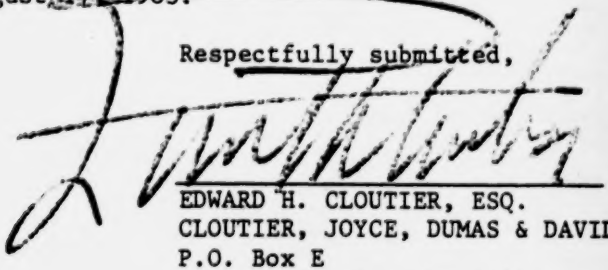
2. The Petitioner presents a constitutional issue that was never raised in the lower court nor passed upon by the lower court. Tyrrell v. District of Columbia, 243 US 1 (1916).

3. The deceased employee did not have children living with him at the time of his death and therefore the facts of record in the court below will not support a determination of the question presented in the Petition.

Therefore, the petition for writ of certiorari should be denied.

Dated: August 17, 1983.

Respectfully submitted,



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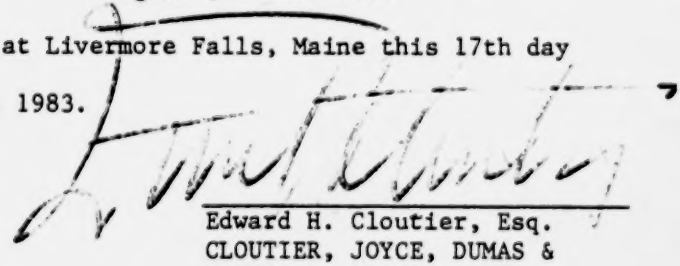
CERTIFICATE OF SERVICE

Pursuant to Rule 33 of the Rules of this Court, the undersigned, counsel of record for Respondent Shawn Ladner, did deposit today in the United States Mail in Livermore Falls, Maine, first class postage prepaid, three copies of the above "Memorandum Opposing Certiorari" for, and addressed to, counsel for each of the parties as follows:

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154 State Street
P.O. Box 33
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Michael D. Seitzinger, Esquire
Pierce, Atwood, Scribner, Allen,
Smith and Lancaster
77 Winthrop Street
Augusta, Maine 04330

Dated at Livermore Falls, Maine this 17th day of August, 1983.



Edward H. Cloutier, Esq.
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Shawn Ladner